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FILED

DEC 15 2016

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 13-21734-C-7
JOSE MARTINEZ and) DCN: DNL-7, DNL-3
ANA GRANADOS, Debtors.)
J. MICHAEL HOPPER, Plaintiff) Adversary No. 13-02293-C
v.)
JOSE MARTINEZ and)
ANA GRANADOS, Defendants.)

MEMORANDUM DECISION

Before: David E. Russell, Bankruptcy Judge

J. Russell Cunningham, J. Luke Hendrix, Nolan, Livaich & Cunningham, Sacramento, California, for Plaintiff.

Scott A. Coben, Sacramento, California, for Defendants.

J. Michael Hopper, chapter 7 trustee, objects to the amended wildcard exemption claimed by the debtors Jose Martinez and Ana Granados. Having considered the papers, the evidentiary record, and arguments of counsel, the court overrules the trustee's objection and denies the trustee's motion for turnover based upon the following findings of fact and conclusions of law made pursuant to Federal Rule of Civil Procedure 52(a), as incorporated into Federal Rule of Bankruptcy Procedure 7052 and

1 applied to contested matters by Federal Rule of Bankruptcy
2 Procedure 9014(c).

3
4 **I. BACKGROUND**

5 The debtors Jose Martinez and Ana Granados filed a voluntary
6 chapter 7 petition on February 8, 2013. J. Michael Hopper is the
7 duly appointed chapter 7 trustee.

8 The debtors speak Spanish and very little English.
9 (Alternate Direct Test. of Jose Martinez ("Martinez Test.") at 2,
10 ¶ 4.) Due to financial difficulties, the debtors sought counsel
11 at the law offices of Thomas Gillis in January of 2012. (Id. at
12 2, ¶ 5.) The debtors met with a paralegal who informed them that
13 he would prepare the necessary bankruptcy paperwork and call them
14 when it was ready to sign. (Id.)

15 When the debtors did not receive any phone call, they asked
16 their daughter, who spoke English, to assist them in
17 communicating with the office of Mr. Gillis. (Id. at 2, ¶ 4.)
18 After the debtors' daughter went to the law offices and made
19 numerous phone calls, the debtors were finally able to sign the
20 bankruptcy petition and schedules in July of 2012. (Id. at 3, ¶
21 10.) After even further delays, the petition was filed on
22 February 8, 2013. (Id. at 3, ¶ 13.) The filed schedules had not
23 been changed since they were signed seven months earlier. The
24 debtors contend that someone from the office of Mr. Gillis used
25 white out in an attempt to cover up the date next to each of the
26 debtors' signatures and convert the year of the signing from 2012
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1 to 2013. (Id. at 4, ¶ 14.)

2 In their first amended schedules, the debtors scheduled
3 their interests in a 1988 Chevy catering truck, valued in the
4 amount of \$19,500, a sole proprietorship business operated out of
5 the catering truck identified as La Guanakita, valued in the
6 amount of \$500, and a 2004 Hummer H2, valued in the amount of
7 \$14,379. (Docket No. 1.) The debtors claimed the catering truck
8 and business exempt from their bankruptcy estate under California
9 Code of Civil Procedure section 703.140(b)(5), California's so-
10 called "wildcard" exemption, which allows a debtor to exempt up
11 to \$25,340 in "any property." (Docket No. 15.)

12 The trustee subsequently asked that the debtors either
13 terminate or seek abandonment of the business. (Trustee Decl.,
14 Docket No. 127 at 1, ¶ 2.) The debtors filed a motion to abandon
15 the catering truck and business, which the court granted on March
16 26, 2013. (Docket No. 19.)

17 In or about March and April 2013, the trustee requested
18 turnover of loan statements and the insurance policy for the
19 Hummer. (Alternate Direct Test. of J. Michael Hopper at 3, ¶
20 10.)

21 On May 9, 2013, the debtors amended their wildcard
22 exemption. (Docket No. 25.) The debtors reduced the dollar
23 amount of the wildcard exemption applied to the catering truck
24 and applied, for the first time, a California Code of Civil
25 Procedure section 703.140(b)(6), "tools-of-the-trade", exemption
26 to the catering truck. (Id.) The debtors used the freed-up
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28

1 wildcard dollar amount to exempt a 2004 Hummer H2 in the amount
2 of \$6,269 and a 2012 federal tax refund valued at \$6,000. (Id.)

3 The debtors had not disclosed the existence of the 2012 tax
4 refund on their petition or subsequent amended schedules prior to
5 May 9, 2013. The trustee later discovered that the tax return
6 had been prepared on January 27, 2013 and that the debtors had
7 received a refund in the amount of \$6,526. (Pl's Tr. Exs. 13,
8 14.)

9 The debtors contend that they did not disclose the 2012 tax
10 refund in their original schedules because they had prepared
11 their original schedules in early 2012 and had filed their tax
12 return in early 2013. (Martinez Test. at 6, ¶ 20.) In May of
13 2013, a representative from the office of Mr. Gillis contacted
14 the debtors and inquired as to the amount of their 2012 tax
15 refund. (Id.) Prior to this time, the debtors had not attended
16 any scheduled meetings of creditors because they were either not
17 informed of the meetings or informed they did not have to attend.
18 (Id. at 5, ¶ 17-18.) Further, the debtors never saw or signed
19 the May 9, 2013 amended schedules before they were filed. (Id.
20 at 6, ¶ 22.)

21 On July 16, 2013, the trustee filed the following three
22 motions: (1) an objection to the debtors' claims of exemption in
23 the catering truck, Hummer, and 2012 tax refund (Docket No. 52);
24 (2) a corresponding motion for turnover (Docket No. 48); and (3)
25 a motion to determine excessive payment to Mr. Gillis for doing
26 poor work (Docket No 43). The court sustained the objection to
27

1 claim of exemption on September 23, 2013 on the basis that the
2 exemptions claimed were in excess of the allowable dollar
3 amounts. (Docket No. 83.) The remaining two motions were
4 scheduled for hearing on November 5, 2013.

5 The debtors retained Scott Coben to replace Mr. Gillis as
6 attorney of record on October 28, 2013. (Docket No. 95.) Two
7 days later, the debtors filed amended schedules B and C. (Docket
8 No. 97). The amended schedule B (1) listed the value of the
9 business at \$0 (its resale value); (2) listed the exact amount of
10 the tax refund at \$6,526; (3) listed the value of the catering
11 truck at \$12,000 (reduced from \$19,500); and (4) listed the value
12 of the Hummer, which was subject to a purchase security interest,
13 at \$13,875. (Docket No. 97.) The debtors contend they had
14 originally overvalued the catering truck by listing its value as
15 the price the debtors had paid to purchase the truck six years
16 prior to their bankruptcy filing. (Martinez Test. at 7, ¶ 29.)

17 The corresponding amended schedule C applied exemptions to
18 the assets using various provisions under California's section
19 703.140(b) exemption scheme. Specifically, (1) the tax refund
20 was exempted under the wildcard provision; (2) the catering truck
21 was exempted under the wildcard and tools-of-the-trade
22 provisions; and (3) the Hummer was exempted under the wildcard
23 and automobile provisions.

24 On the morning of the November 5, 2013 hearings on the
25 motion for turnover and motion for excessive payment to counsel,
26 the trustee advised Mr. Coben that the value of the Hummer had
27

1 increased since the debtors had made payments on the loan secured
2 by the Hummer and that the trustee would request turnover due to
3 nonexempt equity. (Defs' Trial Br., Case No. 13-02293, Adv.
4 Docket No. 33 at 9-10.) The debtors filed an amended schedule C
5 that same day to exempt all equity in the Hummer. (Docket No.
6 99.)

7 The debtors have not amended their schedules since November
8 5, 2013. The aggregate dollar amount of wildcard exemptions
9 claimed on the November 5 amended schedules equates to the
10 statutory limit of \$25,340 allowed under California Code of Civil
11 Procedure section 703.140(b)(5) as of the petition date. (Id.)

12 The court granted the trustee's motion to determine
13 excessive payment to debtors' counsel. The motion claimed that
14 Mr. Gillis (a) failed to schedule certain assets; (b) provided
15 inaccurate information regarding the loan balance on the Hummer;
16 (c) failed to turn over pay advices for the 60 days before the
17 filing; (d) failed to provide information regarding two vehicles;
18 (e) failed to provide bank statements; (f) failed to accurately
19 schedule a tax refund; (g) changed exemptions after abandonment;
20 and (h) was unprepared for meetings of creditors. (Docket No.
21 43.) The court determined that Mr. Gillis essentially provided
22 services of a petition preparer and ordered Mr. Gillis to
23 disgorge fees in the amount of \$1,575.00 to the trustee on behalf
24 of the estate. (Docket No. 103.)

25 The court continued the motion for turnover several times.
26 (Docket Nos. 98, 114.) The court suggested both attorneys review
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1 the Law v. Siegel case pending before the Supreme Court and
2 warned that the court may wait until the Supreme Court issues a
3 decision before deciding on any requests for surcharging
4 exemptions.

5 In response to the debtors' November 5, 2013 amended
6 schedules, the trustee filed another objection to the debtors'
7 wildcard exemptions applied to the Hummer and 2012 tax refund on
8 the basis of bad faith. (Docket No. 115.) This objection and
9 the continued motion for turnover (Docket No. 48) were
10 consolidated and set to be tried with the trustee's adversary
11 complaint objecting to discharge of the debtors pursuant to 11
12 U.S.C. section 727(c), (d), and (e) (Adv. Docket No. 1). The
13 complaint seeks denial of discharge based on unjust (1) failure
14 to turn over the Hummer and tax return to the trustee; and (2)
15 failure to produce required documents and properly disclose
16 assets. (Adv. Docket No. 1.)

17 On July 8, 2014, the court held a one-day trial primarily
18 litigating questions of law regarding the objection to exemption.
19 At the conclusion of the trial, the court and the parties agreed
20 to put litigation of the discharge objection on the "back burner"
21 until after the court ruled on the exemption issue. (Trial Tr.,
22 Adv. Docket No. 41 at 58.)

II. DISCUSSION

A. Disallowing a State-Created Exemption in the Ninth Circuit

After Law. v. Siegel

The Bankruptcy Code authorizes a debtor to exempt certain assets. 11 U.S.C. § 522(b).

California residents filing for bankruptcy must choose from two sets of exemption options under state law. See 11 U.S.C. § 522(b)(1); Cal. Civ. P. Code § 703.130; In re Steward, 227 B.R. 895, 898 (9th Cir. BAP 1998). "One set of exemptions are state law non-bankruptcy exemptions, including a homestead exemption," and the "other set of exemptions is modeled closely upon the federal exemptions listed in § 522(d)." In re Steward, 227 B.R. at 898. A debtor may choose only one set of exemptions. Id.; see Cal. Civ. P. Code § 703.140(a). Under the Bankruptcy Code and California law, exemptions are to be construed liberally in favor of the debtor. In re Arrol, 207 B.R. 662, 665 (Bankr. N.D. Cal.1997).

Federal Bankruptcy Rule 1009(a) provides that a "schedule . . . may be amended by the debtor as a matter of course at any time before the case is closed," and the Ninth Circuit has applied this right to the claim of exemptions. See In re Michael, 163 F.3d 526, 529 (9th Cir.1998); see also In re Nicholson, 435 B.R. 622, 630 (9th Cir. BAP 2010).

Prior to the recent Supreme Court case Law v. Siegel, bankruptcy courts routinely used their discretion under 11 U.S.C. section 105(a) to deny exemptions based on bad faith or

1 prejudice. 134 S.Ct. 1188 (2004). Law held that "when a debtor
2 claims a state-created exemption, the exemption's scope is
3 determined by state law, which may provide that certain types of
4 debtor misconduct warrant denial of the exemption." Id. at
5 1196-97. The Supreme Court emphasized that "federal law provides
6 no authority for bankruptcy courts to deny an exemption on a
7 ground not specified in the Code," and that any basis for denial
8 of a state law exemption must arise under state law. Id. at
9 1197-98.

10 A growing number of cases have held that bankruptcy courts
11 lack the authority to disallow a debtor's claimed state-created
12 exemption based on section 105(a), whether indirectly by denying
13 leave to amend or directly by disallowing the exemption, because
14 doing so would be irreconcilable with Law v. Siegel. See, e.g.,
15 In re Elliott, 523 B.R. 188 (9th Cir. BAP 2014); In re Lua, 529
16 B.R. 766 (Bankr. C.D. Cal.), aff'd, 551 B.R. 448 (C.D. Cal.
17 2015).

18 Here, the trustee's objection initially argued that the
19 debtors' amended wildcard exemption should be disallowed under
20 section 105(a), based on the debtors' bad faith. The court
21 disagrees and interprets Law v. Siegel as a clear mandate that
22 this court lacks the authority to disallow a claim of exemption
23 based on section 105(a).

24 Without identifying a specific legal principle, the
25 trustee's trial brief proposed that a basis independent of
26 section 105(a) bars the debtors' from amending their wildcard
27 exemption:

1 Even if Law is read broadly to preclude exemption
2 objections on bad faith grounds and other judge-made
3 exceptions to the exemption scheme, Law is not
4 implicated in this case because this case stands
5 independent of bad faith. This case is about the
6 Debtors trying to exceed the statutory limits of the Wild Card
7 exemption. The Debtors are attempting to re-use the Wild Card
8 exemption after already using it and benefitting from it to
9 obtain abandonment of assets after the Court, the Trustee, and
10 other interested parties relied upon the same.

11 (Pl's Trial Br., Adv. Docket No. 38 at 9.)

12 The trustee appears to argue the debtors should be equitably
13 estopped from amending the wildcard exemption applied to the
14 catering truck after the debtors had successfully obtained
15 abandonment of the truck. The court disagrees with the trustee's
16 assertion that Law v. Siegel does not extend to this situation.
17 As the Supreme Court and the Ninth Circuit Bankruptcy Appellate
18 Panel have instructed, this court will turn to California state
19 law to determine whether the debtors' amended wildcard exemption
20 may be disallowed based on the equitable doctrine asserted by the
21 trustee.

22 B. Disallowance of Exemption Based on California Law

23 California courts have long recognized that the doctrine of
24 equitable estoppel applies to state-created bankruptcy
25 exemptions. See, e.g., In re Steward, 227 B.R. 895, 899 (9th
26 Cir. BAP 1998) (applying estoppel principles to homestead
27 exemption and concluding homeowner was not estopped from claiming
28 homestead exemption); In re Lua, 551 B.R. 448, 453 (C.D. Cal.
2015) (denying homestead exemption on grounds of estoppel under
California law); Jefferson v. Tom, 52 Cal.App.2d 432, 436-37

1 (1942) (denying homestead exemption on grounds of estoppel and
2 laches).

3 To invoke equitable estoppel under California law, a party
4 must show: "(a) a representation or concealment of material
5 facts; (b) made with knowledge, actual or virtual, of the facts;
6 (c) to a party ignorant, actually and permissibly, of the truth;
7 (d) with the intention, actual or virtual, that the ignorant
8 party act on it; and (e) that party was induced to act on it."

9 Simmons v. Ghaderi, 44 Cal.4th 570, 584 (2008). The party
10 asserting the existence of an estoppel under California law has
11 the burden of establishing all the elements thereof by a
12 preponderance of the evidence. See, e.g., Guatay Christian
13 Fellowship v. Cty. of San Diego, 670 F.3d 957, 972 (9th Cir.
14 2011); State Comp. Ins. Fund v. Workers' Comp. Appeals Bd., 40
15 Cal.3d 5, 16 (1985); see also, DeYoung v. Del Mar Thoroughbred
16 Club, 159 Cal.App.3d 858, 862 (1984).

17 For purposes of applying the factors of equitable estoppel
18 to the instant case, the court assumes a debtor may amend an
19 exemption claimed on property that has been abandoned by the
20 estate.

21
22 *1. Representation or Concealment of Material Fact*

23 The party against whom equitable estoppel is sought must
24 have represented or concealed a material fact. Young v. Horizon
25 West, Inc., 220 Cal.App.4th 1122, 1131-32 (2013). Here, the
26 debtor made a written statement, under penalty of perjury, that
27 he sought abandonment of the catering truck on the basis that its
28

1 scheduled value of \$19,500 was claimed exempt under California's
2 section 703.140(b)(5) "wildcard" provision. (Decl. of Jose
3 Martinez, Docket No. 13.) The debtors filed subsequent amended
4 schedules that reduced the dollar amount of the wildcard
5 exemption applied to the catering truck and reduced the listed
6 value of the debtors' interest in the catering truck. The dollar
7 amount of the wildcard exemption necessary to exempt the catering
8 truck is material--given the amount inversely correlates to the
9 amount of nonexempt equity that can be realized in other assets
10 for the benefit of the estate. This element of equitable
11 estoppel is therefore satisfied.

12
13 *2. Made with Knowledge of the Facts*

14 The party against whom estoppel is sought must also have had
15 knowledge of the facts, although "ignorance or mistake will not
16 prevent an estoppel" when a party makes an affirmative statement
17 of facts rather than remains silent. Cty. of Long Beach v.
18 Mansell, 3 Cal.3d 462, 491 (1970). There is no indication that
19 the debtors were aware of their right to claim the catering truck
20 exempt as a "tool of the trade" under California exemption law at
21 any time prior to the March 26, 2013 abandonment order. The
22 debtors first applied the tools-of-the-trade exemption in the May
23 9, 2013 amended schedules. The debtors testified that they had
24 not seen or signed the May 9 amended schedules nor any prior
25 amended schedules and did not become aware of the application of
26 the tools-of-the-trade exemption until after reviewing the docket
27
28

1 with their current counsel of record. (Martinez Test. at 6 ¶
2 22.)

3 California's "tools-of-the-trade" exemption allows a debtor
4 to exempt up to "(\$7,175) in value, in any implements,
5 professional books, or tools of the trade of the debtor or the
6 trade of a dependent of the debtor." Cal. Civ. P. Code §
7 703.140(b)(6). While noting that, "California cases purporting
8 to interpret the scope of the tools-of-the-trade exemption are
9 few and far between," several courts have held that a vehicle
10 qualifies as a "tool of the trade" under California exemption law
11 if it is "necessary" to the debtor's trade, business, or
12 profession. In re Lopez, No. 2:14-BK-12175-BB, 2015 WL 5309580,
13 at *4 (B.A.P. 9th Cir. Sept. 3, 2015).

14 It is undisputed that the debtors operated their sole
15 proprietorship out of the catering truck. (Trustee Decl., Docket
16 No. 115 at 2, ¶ 3.) It is therefore self-evident that the
17 catering truck was "necessary" to the business and qualified as a
18 "tool of the trade" under California exemption law. Further, the
19 Ninth Circuit has held that the mere fact that a chapter 7 debtor
20 exempts an interest in motor vehicle under the California's
21 "wildcard" statute does not prevent a later characterization of
22 the vehicle as a "tool of the trade." In re Garcia, 451 B.R.
23 909, 916-17 (C.D. Cal. 2011), aff'd, 709 F.3d 861 (9th Cir.
24 2013).

25 In contrast to the wildcard exemption, which can be applied
26 to any property, the tools-of-the-trade exemption is narrow in
27 scope. It defies reason to assume a debtor would knowingly elect
28

1 to use the majority of the wildcard dollar amount to exempt an
2 asset that could be exempted under a narrower statutory category.
3 The court concludes the "knowledge of the facts" element is not
4 satisfied.

5
6 *3. To a Party Ignorant of the Truth*

7 To successfully invoke equitable estoppel against the
8 debtor, the trustee must also demonstrate that it was "ignorant,
9 actually and permissibly, of the truth." Simmons, 44 Cal.4th at
10 584. At the time the debtor moved to compel abandonment of the
11 catering truck claimed exempt under the wildcard provision, the
12 trustee had no reason to be aware that the debtor would later
13 amend the claimed wildcard exemption. The trustee did not oppose
14 the abandonment motion and diligently pursued the debtor's
15 interest in nonexempt property. This element is therefore
16 satisfied.

17
18 *4. With the Intention That the Party Act on It*

19 Equitable estoppel requires a finding of intent. Mansell, 3
20 Cal.3d at 491. After the catering truck was claimed exempt and
21 authorized abandoned, only \$5,340 of the wildcard dollar amount
22 was available to exempt remaining assets. With this knowledge,
23 the trustee pursued assets with equity in excess of the remaining
24 wildcard dollar amount. It is reasonable to assume that the
25 debtors intended the trustee to act on their representation that
26 only \$5,340 remained under the wildcard exemption. Nevertheless,
27 it cannot be deduced that the debtors moved to compel abandonment
28

1 of the catering truck with the intent that the trustee would
2 pursue the Hummer and tax refund.

3 The debtors filed the abandonment motion shortly after
4 filing their bankruptcy petition. They did so in reaction to the
5 trustee's ultimatum to either abandon or terminate their
6 business. Considering the catering truck and business were
7 critical to the debtors' livelihood, the debtors' decision to
8 pursue abandonment was likely made hastily and without much
9 reflection or foresight. The debtors' statement of intention
10 filed with their initial petition indicates their intent to
11 retain the Hummer. (Docket 1.) Additionally, the debtors did
12 not remain silent when the trustee pursued the Hummer and tax
13 refund. The debtors repeatedly claimed the Hummer and tax refund
14 exempt and opposed their turnover. The court concludes the
15 element of intent is not satisfied.

16
17 *5. That Party Was Induced to Act on It*

18 The element of reliance requires that the party asserting
19 equitable estoppel change her position in reliance on something
20 said or done by the other party, resulting in detriment or
21 prejudice to the party asserting equitable estoppel. State Comp.
22 Ins. Fund, 40 Cal.3d at 16. It is undeniable that the trustee
23 changed his position in reliance upon the abandonment order. The
24 trustee--relying on the debtors' representation that a majority
25 of the wildcard dollar amount had been applied to the catering
26 truck--sought turnover of the Hummer and tax refund in an effort
27 to compensate creditors.

1 The trustee contends the debtors gained a "windfall" to the
2 detriment of creditors by reducing the wildcard dollar amount
3 used to exempt the catering truck after its abandonment and then
4 using the resulting wildcard balance to exempt the Hummer and tax
5 refund. Framed differently, the trustee posits that the debtors
6 are "trying to exceed" the maximum dollar amount of the wildcard
7 exemption. (Pl's Trial Br., Adv. Docket No. 38 at 9.)

8 Under California's section 703.140(b) exemption framework, a
9 debtor is allowed to exempt certain types of assets up to a
10 designated dollar amount. In pertinent part, a debtor may
11 exempt: (1) \$4,800 in one or more motor vehicles; (2) \$7,175 in
12 tools of the trade of the debtor; and (3) \$25,340 in any
13 property. Cal. Civ. P. Code § 703.140(b)(2), (b)(5), (b)(6). In
14 their final amended schedule C, the debtors properly applied the
15 aforementioned dollar amounts to exempt the Hummer, tax refund,
16 and catering truck. (Docket No. 99.) Had the final amended
17 schedule C been filed with the debtor's original petition, or had
18 the catering truck not been abandoned, it would be undisputable
19 that the debtors had properly exercised their right to claim the
20 exemptions afforded to them under the section 703.140(b)
21 exemption scheme.

22 Factoring in the abandonment order, there are two scenarios
23 in which the wildcard amendment would result in a windfall to the
24 debtors to the detriment of creditors: (1) if the debtors reduced
25 the dollar amount of the wildcard exemption applied to the
26 catering truck without substituting an alternate claim of
27 exemption in its place; or (2) if the debtors reduced the
28

1 scheduled value of the catering truck to less than its
2 liquidation value and reduced the corresponding exemption amount.
3 In both scenarios, the abandonment order would preclude the
4 estate from realizing nonexempt equity in the catering truck.
5 The facts of this case do not present either scenario. The
6 debtors substituted the reduced wildcard dollar amount applied to
7 the catering truck with the tools-of-the-trade exemption, and the
8 \$12,000 valuation of the catering truck credibly reflects the
9 asset's depreciation over six years. Notably, the trustee has
10 never disputed the \$12,000 valuation. (See, e.g., Trial Tr.,
11 Docket No. 41 at 45.)

12 The California Supreme Court has held that equitable
13 estoppel "rests firmly upon a foundation of conscience and fair
14 dealing." Mansell, 3 Cal.3d at 491. Here, it appears the
15 debtors, although significantly hindered by the incompetence of
16 their former counsel, dealt fairly with trustee to the best of
17 their ability. There is no indication that the debtors knowingly
18 declined to apply the tools-of-the-trade exemption to the
19 catering truck. There is no indication that the debtors would
20 have sought abandonment of the catering truck but for the
21 trustee's ultimatum. There is no indication that the debtors
22 intended for the trustee to pursue the Hummer and tax refund.
23 There is no indication that the debtors sought to claim
24 exemptions in excess of the statutory limits. And, there is no
25 indication that the debtors reduced the value of the catering
26 truck to one below its actual value. In conclusion, the court is
27 satisfied that the debtors have engaged in the bankruptcy process
28

1 with conscience and fair dealing.

2 For the reasons set forth above, the court finds that the
3 trustee has not met his burden of establishing that debtors'
4 amended wildcard should be disallowed based on California
5 equitable estoppel.

6
7 C. Turnover of Exempt Assets

8 The trustee seeks turnover of the Hummer notwithstanding the
9 debtors' claim of exemption in the amount \$13,875. The trustee
10 must prove by a preponderance of the evidence that the bankruptcy
11 estate is entitled to a turnover. In re Jacobson, 676 F.3d 1193,
12 1201 (9th Cir. 2012). A debtor is not required to turn over
13 property that is of "inconsequential value or benefit to the
14 estate." 11 U.S.C. § 542(a).

15 The trustee has provided the following evidence to establish
16 that the Hummer is of "consequential value" to the estate:

17 The Debtors have advised [the trustee] that the Hummer
18 is in good condition, has been driven about 120,000
19 miles, and as of May 19, 2013 had a Kelly Blue Book
20 private party value of \$17,500. In [the trustee's]
21 opinion, based on consultation with auctioneer Dennis
West, the Hummer would sell at auction for between
\$12,000 and \$15,000, with selling costs ranging from
\$1,500 to \$2,000, netting a range of \$10,500 to
\$13,000.

22 (Trustee Decl., Docket 48 at 2, ¶ 5.)

23 At the time of writing this decision, a 2004 Hummer H2 in
24 good condition has a Kelly Blue Book private party value of
25 \$13,099. Based upon the formula set forth in the turnover
26 motion, the court finds no possibility for the estate to realize
27 equity in the Hummer in excess of the allowed exemption in the

1 amount of \$13,875. Accordingly, the trustee has not met his
2 evidentiary burden to prove that the Hummer is of "consequential
3 value" to the estate. The Hummer is therefore not subject to
4 turnover.

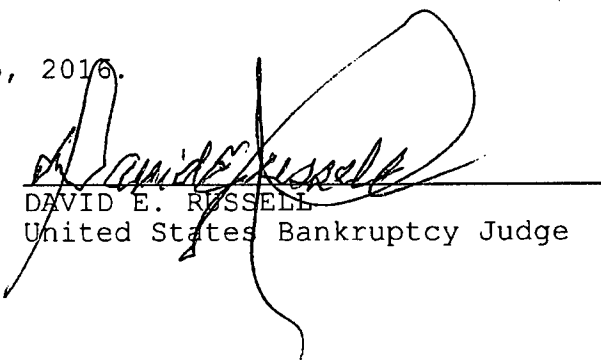
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6 D. Denial of Discharge

7 The trustee filed a complaint objecting to discharge of the
8 debtors pursuant to 11 U.S.C. section 727(c), (d), and (e). In
9 light of the foregoing decision, the trustee is ordered to file a
10 statement as to whether the trustee wishes to proceed with the
11 discharge objection.

12
13 **III. CONCLUSION**

14 For the foregoing reasons, the Objection to Claim of
15 Exemption is OVERRULED and the Motion for Turnover is DENIED.

16
17 Dated: December 15, 2016.

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19 
20 DAVID E. RUSSELL
21 United States Bankruptcy Judge
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

J. Michael Hopper
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J. Luke Hendrix
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Jose Martinez
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Sacramento, CA 95823

Ana Granados
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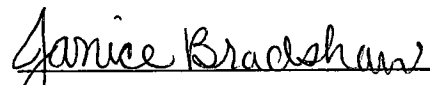
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Robert T Matsui United States Courthouse
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Sacramento, CA 95814

Dated: 12-16-16


DEPUTY CLERK